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TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
MARCH 1, 2011

I appreciate the opportunity to comment on Raised Bill No. 1087, An Act Implementing the Recommendations of the Program Review and Investigations Committee Concerning Whistleblower Complaints.

I commend the diligent effort of the committee and its staff in their review of the important whistleblower process.

I strongly support the provisions of the bill that require state agencies to post a notice of the provisions of the Whistleblower statute in a conspicuous place that is readily available for viewing by employees. I also support the proposal to extend the time from thirty to ninety days for whistleblowers to file complaints concerning allegations of retaliatory personnel action with the Chief Human Rights Referee.

In addition, the proposal to eliminate my office's power to investigate claims of retaliatory personnel action makes good sense. Under current law, alleged victims of retaliation already have the option to pursue remedies from the Chief Human Rights Referee, the Employee Review Board, or through applicable collective bargaining contracts. My office's current role is limited to investigating claims of retaliation. I lack any authority to order binding relief or otherwise make an employee whole. In light of the existing remedies available to employees and the very limited role my office currently plays, I believe that eliminating my authority to investigate such claims would result in less confusion about the process and, therefore, encourage employees to pursue the remedies already available to them under current law. It also would free up valuable resources for my office to perform the crucial role of investigating and reporting on fraud, waste, and corruption in state government.

At this time, however, I think it is premature to go beyond what these sections of the bill seek to accomplish. The new Auditors of Public Accounts and I took office less than two months ago. I have great respect for the new Auditors of Public Accounts and my working relationships with each of them extend back many years. I met with them recently to discuss possible changes to the way the two offices handle complaints and plan to meet with them again in the coming weeks and months to consider and implement changes to the way the "Whistleblower" function will be carried out – to see what works and what does not. Indeed, some of the changes proposed under the bill do not require a legislative change at all, such as the two offices entering into a Memorandum of Understanding. Consequently, I believe that

allowing the new administrations to engage in this process before mandating some of these provisions through legislation would be the more prudent and appropriate course at this juncture. We would be in a much better position to recommend additional legislative changes after we have had more time to work together.

If the committee, nevertheless, concludes that legislative changes beyond those discussed above are necessary at this time, I recommend eliminating certain of the proposed changes to the law. For example, Executive Branch agencies, quasi-public agencies and large state contractors do not report to my office or to the Auditors of Public Accounts. Hence, we cannot require any sort of "corrective action" of them. My office also lacks the resources that would be required to perform the types of audits this proposal appears to contemplate. I believe any such requirements should be placed upon the entity that was the subject of the report or the agency or public official to whom such entities are ultimately accountable.

In addition, while I support the general goal of improved communications and, when possible, openness and transparency with the public, I oppose as currently drafted the provisions of the bill requiring my office and the Auditors of Public Accounts to provide public updates on the status and disposition of our investigations to the whistleblower, on my office's website, as well as on an annual basis to the legislature. These provisions are problematic on a number of levels, not only because they are duplicative but more importantly because, as drafted, may run afoul of current law and impede ongoing investigations. Disclosure of referrals from my office to the Office of State Ethics, for example, could run afoul of current legal requirements of confidentiality under Conn. Gen. Stat. § 1-82a. Second, disclosure of the status of a pending investigation may severely impede that investigation and undermine my office's ability to conduct thorough and effective investigations. Finally, the reporting requirements are duplicative and will require that already limited resources be used to update the status of investigations rather than on the investigations themselves. My office is committed to working with the Auditors of Public Accounts to appropriately and fairly investigate material allegations of waste, fraud, abuse and corruption. I urge you to give us the opportunity to do just that before making some of the changes in the proposed legislation.

I thank the committee for its time and effort on this important issue. I look forward to working with each of you to improve the whistleblower process in Connecticut.